UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, August 12, 2020
Place: Department A – Courtroom #11
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:00 AM

1. 20-11800-A-7 **IN RE: SULEMA VASQUEZ**
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
6-30-2020 [18]

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for August 21, 2020 at 10:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

2. 20-11623-A-7 **IN RE: JOSE/CRISTINA PIMENTEL**
KMM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-25-2020 [13]

TOYOTA MOTOR CREDIT CORPORATION/MV
VINCENT QUIGG/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at

least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Toyota Motor Credit Corporation. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Toyota Avalon ("Vehicle"). Doc. #13.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make at least six complete pre- and post-petition payments. The movant has produced evidence that debtors are delinquent by at least $3,649.17. Doc. #13, 16.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. Id. The Vehicle is valued at $15,000.00 and debtor owes $23,336.87. Doc. #13. According to the debtors' Statement of Intention, the Vehicle will be surrendered.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtors' Statement of Intention, the Vehicle will be surrendered.

3. 14-11336-A-7 **IN RE: RAUL/REBECCA JARA**
SW-1

MOTION TO AVOID LIEN OF DISCOVER BANK
6-15-2020 [92]

RAUL JARA/MV
STARR WARSON/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The form and/or content of the notice do not comply with Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(iii).

Current LBR 9014-1(d)(3)(B) requires the moving party to include more information in notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the local rules in order to be compliant in future matters. The rules can be accessed on the court's website at http://www.caeb.circ9.dcn/LocalRules.aspx.

4. 14-11336-A-7 **IN RE: RAUL/REBECCA JARA**
SW-2

MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
6-15-2020 [94]

RAUL JARA/MV
STARR WARSON/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The form and/or content of the notice do not comply with Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(iii).

Current LBR 9014-1(d)(3)(B) requires the moving party to include more information in notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the local rules in order to be compliant in future matters. The rules can be accessed on the court's website at http://www.caeb.circ9.dcn/LocalRules.aspx.

5. 20-11838-A-7 **IN RE: CHARLES/PEGGY BALLARD**
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
6-30-2020 [14]

LAUREN FRANZELLA/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtors shall attend the meeting of creditors rescheduled for August 21, 2020 at 1:00 p.m. If the debtors fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

6. 20-11840-A-7 **IN RE: ENRIQUE CAMPOS RAMOS**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-29-2020 [15]

SANTANDER CONSUMER USA INC./MV
MARK ZIMMERMAN/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.
NON-OPPOSITION

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a

prima facie showing that they are entitled to the relief sought, which the movant has done here.

The debtor filed a non-opposition to the motion on July 15, 2020. Doc. #24.

The movant, Santander Consumer USA Inc. DBA Chrysler Capital ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2011 Dodge Nitro ("Vehicle"). Doc. #15.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least six complete pre-petition payments. The movant has produced evidence that debtor is delinquent by at least $2,116.20. Doc. #15, #20.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtors' Statement of Intention, the Vehicle will be surrendered.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least six pre-petition payments to Movant and the Vehicle is a depreciating asset.

7. 20-12149-A-7 **IN RE: VANESSA ESTES-EZELL**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-10-2020 [12]

AMERICREDIT FINANCIAL
SERVICES, INC./MV
ROSALINA NUNEZ/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v.

Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Americredit Financial Services, Inc. DBA GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2014 Nissan Armada ("Vehicle"). Doc. #12.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least three complete pre-petition payments. The movant has produced evidence that debtor is delinquent by at least $1,815.72. Doc. #12, 18.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. Id. The Vehicle is valued at $19,600.00 and debtor owes $25,291.32. Doc. #12.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least three pre-petition payments to Movant and the Vehicle is a depreciating asset.

8. 17-12389-A-7 **IN RE: DON ROSE OIL CO., INC.**
WF-25

MOTION TO SELL
7-22-2020 [1084]

RANDELL PARKER/MV
RILEY WALTER/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better bids.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Randell Parker, the Chapter 7 Trustee (the "Trustee") of the bankruptcy estate of Don Rose Oil Company, Inc. (the "Debtor"), moves pursuant to 11 U.S.C. § 363(b)(1) and Federal Rule of Bankruptcy Procedure 6004(a) for authority to sell the Debtor's membership interest in DRO Barite, LLC ("DRO Barite") and the rights to certain litigation claims against cross-defendants in Kodiak Mining & Minerals II LLC et al. v. Don Rose Oil Co., Inc. et al., Adversary Proceeding No. 17-01086 (the "Adversary Proceeding")(collectively, the "Property"), "as is," "where is," for the purchase price $35,000.00, subject to overbid and the court's approval. Doc. #1084.

Pursuant to 11 U.S.C. § 363(b)(1), a trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under section 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018), citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996), citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under section 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The Trustee and Sallyport Commercial Finance, LLC ("Sallyport"), in addition to several other entities, are parties in the Adversary Proceeding. Doc. #1084. The Trustee and Sallyport have entered into an asset purchase agreement, which

provides that Sallyport will pay $35,000.00 to the Trustee to purchase the estate's interest in DRO Barite and the Trustee's rights against Kodiak Mining & Minerals II LLC; Hellenic Petroleum, LLC; Consolidated Resources, Inc.; Panagriotis Kechagias; and Don Rose as set forth in the counterclaim filed in the Adversary Proceeding, "as is," "where is," subject to overbid. Doc. #1087, Ex. A. In addition, Sallyport agrees to release any lien it might have on the first $35,000.00 proceeds of sale. Id. The Trustee and Sallyport further agree that within 45 days of the close of the sale, Sallyport will substitute its counsel in place of the Trustee's counsel in the Adversary Proceeding. Id.

The Trustee believes the proposed sale is in the best interests of the estate and has stated a valid business justification. Doc. #1086, Tr.'s Decl. ¶ 5. The Trustee has investigated the assets being sold, but the Trustee has not been able to find a buyer for DRO Barite willing to offer an amount that would exceed the sum of Sallyport's liens on DRO Barite. Id. Whereas, a sale to Sallyport would generate $35,000.00 in unencumbered assets for the estate. Id. Further, the sale of these assets would allow the Trustee to close the case in an expedient manner. Id. The proposed sale is subject to overbid at hearing, where Sallyport may credit bid amounts due to it from DRO Barite and the estate toward the overbid portion of the purchase price. Doc. #1087, Ex. A.

Unless opposition is presented and subject to overbids at the hearing, the court is inclined to grant the motion and finds that the sale of the Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith.

9. 17-12389-A-7 **IN RE: DON ROSE OIL CO., INC.**
WF-29

MOTION TO ESTABLISH CHAPTER 11 ADMINISTRATIVE EXPENSE CLAIMS BAR DATE
7-22-2020 [1089]

RANDELL PARKER/MV
RILEY WALTER/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Randell Parker, the Chapter 7 Trustee (the "Trustee") of the bankruptcy estate of Don Rose Oil Company, Inc. (the "Debtor"), seeks an order from the court establishing October 15, 2020 as the last date for any claimant to file a Chapter 11 administrative expense claim against the estate, and December 1,

2020 as the last date on which claimants may set a request for allowance of such claims for hearing. Doc. #1089.

The Debtor filed this case under Chapter 11 on June 22, 2017, and the court ordered this case converted to Chapter 7 effective March 28, 2018. Doc. #1089. The Trustee is winding down his administration of this case. Doc. #1091, Tr.'s Decl. at ¶ 5. In the event there are sufficient funds to pay all Chapter 7 administrative claims, the remaining funds will be available for distribution to Chapter 11 administrative creditors. Id. at ¶ 6.

Federal Rule of Bankruptcy Procedure 1019(6) provides that a request for payment of an administrative expense incurred before conversion of the case is timely filed under section 503(a) of the Bankruptcy Code if it is filed before conversion or a time fixed by the court. Accordingly, the court will set October 15, 2020 as the last date for any claimant to file a Chapter 11 administrative expense claim against the estate, and December 2, 2020 as the last date on which claimants may set a request for allowance of such claims for hearing, because the court intends to have a Fresno Chapter 7 calendar on December 2, 2020.

Unless opposition is presented at the hearing, the court will grant this motion as modified. The Trustee shall serve notice of the entry of the order establishing the deadline set forth in the motion on the parties listed on the mailing matrix in this case.

10. 17-12389-A-7 **IN RE: DON ROSE OIL CO., INC.**
WF-34

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH B&L FARMS
7-22-2020 [1093]

RANDELL PARKER/MV
RILEY WALTER/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Randell Parker, the Chapter 7 Trustee (the "Trustee") of the bankruptcy estate of Don Rose Oil Company, Inc. (the "Debtor"), requests the court's approval of a settlement agreement and release between the Trustee and B&L Farms ("B&L") in Adversary Proceeding No. 19-01057, entitled Randall Parker, Trustee v. B&L Farms (the "Adversary Proceeding"). Doc. #1093.

The Adversary Proceeding sought the avoidance and recovery of alleged preferential and/or fraudulent transfers of fuel from the Debtor to B&L, totaling approximately $79,950.86. Doc. #1093. The Trustee and B&L have agreed to a settlement under which B&L will pay the estate $36,000.00, the Trustee agrees to dismiss the Adversary Proceeding, and each party agrees to release the other from any and all claims. Doc. #1096, Ex. A

On a motion by the Trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that the Trustee has considered the standards of Woodson, 839 F.2d. at 620, and A & C Properties, 784 F.2d at 1381. Although the settlement amount of $36,000.00 represents only 45% of the amount sought in the Adversary Proceeding, the Trustee believes this settlement is in the best interest of the estate. Doc. #1095, Tr. Decl. ¶ 10. B&L contends any transfers were made in the ordinary course of business. Id. Although the Trustee disputes B&L's defenses, the Trustee recognizes recovery could be completely eliminated if B&L asserts its defenses successfully. Id. The Trustee recognizes there is a possibility of loss at trial. Id. Continued litigation of the Adversary Proceeding would incur further attorneys' fees and result in an uncertain outcome. Id. The Trustee is not aware of any impediments to collection from B&L. Id. at ¶ 11. The compromise will generate $36,000.00 for the estate for the benefit of the creditors without the expense and uncertainty of further litigation. The court concludes that the Woodson factors balance in favor of approving the compromise.

The court finds the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. It appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the Trustee's business judgment. Accordingly, unless opposition is presented at the hearing, the motion is GRANTED.

The order should be limited to the claims compromised as described in the motion. This ruling is not authorizing the payment of any fees or costs associated with the litigation.

11. 17-12389-A-7 **IN RE: DON ROSE OIL CO., INC.**
19-1057

STATUS CONFERENCE RE: COMPLAINT
6-10-2019 [1]

PARKER V. B & L FARMS
DANIEL EGAN/ATTY. FOR PL.

NO RULING.

10:00 AM

1. 20-10705-A-7 **IN RE: NORMA KELLY**
20-1028

RESCHEDULED STATUS CONFERENCE RE: COMPLAINT
5-1-2020 [1]

NUVISION FEDERAL CREDIT UNION
V. KELLY
ALANA ANAYA/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. 18-14920-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA**
GENERAL PARTNERSHIP
20-1034

RESCHEDULED STATUS CONFERENCE RE: COMPLAINT
6-5-2020 [1]

SOUSA V. FRED AND AUDREY
SCHAKEL AS TRUSTEES OF THE
RONALD CLIFFORD/ATTY. FOR PL.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to August 13, 2020, at 10:00 a.m.

NO ORDER REQUIRED.

The status conference will be continued to August 13, 2020 at 10:00 a.m., to be heard with the motion to dismiss adversary proceeding.

3. 19-15321-A-7 **IN RE: MARIA RAMIREZ**
20-1037

RESCHEDULED STATUS CONFERENCE RE: COMPLAINT
6-9-2020 [1]

FEAR V. RAMIREZ ET AL
KELSEY SEIB/ATTY. FOR PL.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to September 17, 2020, at 11:00 a.m.

ORDER: The court will issue an order.

The Plaintiff filed a status report on July 28, 2020, requesting that the status conference be continued to allow additional time to discuss settlement.

Doc. #17. Therefore, the status conference will be continued to September 17, 2020, at 11:00 a.m.

4. 20-10422-A-7 **IN RE: DAVID SERRANO AND RITA DE GUZMAN**
20-1025

RESCHEDULED STATUS CONFERENCE RE: COMPLAINT
5-1-2020 [1]

NUVISION FEDERAL CREDIT UNION
V. SERRANO
ALANA ANAYA/ATTY. FOR PL.

NO RULING.

5. 19-12763-A-7 **IN RE: ANTONIO/JUANA VELASQUEZ**
19-1124

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-4-2019 [1]

FORD MOTOR CREDIT COMPANY V.
VELASQUEZ ET AL
AUSTIN NAGEL/ATTY. FOR PL.

NO RULING.

6. 17-12389-A-7 **IN RE: DON ROSE OIL CO., INC.**
19-1060

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
6-13-2019 [6]

PARKER V. HAPPY ROCK MERCHANT
SOLUTIONS, LLC
DANIEL EGAN/ATTY. FOR PL.
DISMISSED 7/20/20

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing this case was already entered on July 20, 2020. Doc. #66. The pre-trial conference will be DROPPED AS MOOT.

1. 20-10639-A-7 **IN RE: WILFRIDO VILLAGOMEZ CANCINO AND** SILVIA VILLAGOMEZ

REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK N.A.
7-22-2020 [24]

NICHOLAS ANIOTZBEHERE/ATTY. FOR DBT.
DISCHARGED. THIS REAFFIRMATION SUPERSEDED REAFFIRMATION #21 AS A DUPLICATE

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied as untimely.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to Fed. R. Bankr. P. 4008 the reaffirmation shall be filed no later than 60 days after the first date set for the meeting of creditors. In this case, the meeting of creditors was set for April 24, 2020. The deadline to file the reaffirmation agreement was June 23, 2020. The case was discharged on June 29, 2020. Doc. #19. Debtors' counsel did not file a request to extend time to file a reaffirmation agreement. The reaffirmation agreement was not filed until July 16, 2020. Doc. # 21.

Therefore, the reaffirmation agreement hearing will be denied as untimely.

1:30 PM

1. 20-11367-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
BPE-1

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY
7-24-2020 [94]

CALIFORNIA ENERGY EXCHANGE CORPORATION/MV
LEONARD WELSH/ATTY. FOR DBT.
D. KEITH DUNNAGAN/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

This motion was filed on less than 28 days' notice, but at least 14 days' notice. LBR 9014-1(f)(2)(C) requires the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

Movant's notice improperly provides, "[o]bjections must be filed within 14 days of the mailing of the notice. If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than seven days' notice to the objector, the movant, the parties on whom service is required, and such other entities as the court may direct." Doc. #94.

LBR 9004-2(c)(1) requires that motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents. Here, the movant did not file the motion and the notice separately, but rather together as a single document. Doc. #94.

The notice also does not contain the language required under LBR 9014-1(d)(3)(B)(iii). Doc. #94. LBR 9014-1(d)(3)(B), which is about noticing requirements, requires the movant to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

3:00 PM

1. 20-11413-A-13 **IN RE: BRIAN/JESSICA WILLIAMS**
MHM-1

MOTION TO DISMISS CASE
7-8-2020 [15]

MICHAEL MEYER/MV
SCOTT LYONS/ATTY. FOR DBT.
DISMISSED 7/8/20

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was already entered on July 8, 2020. Doc. #19. The motion will be DENIED AS MOOT.

2. 20-11614-A-13 **IN RE: HUMBERTO RAZO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-10-2020 [18]

SCOTT LYONS/ATTY. FOR DBT.
INSTALLMENT PAYMENT OF $210.00 ON 7/13/20

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

3. 20-10627-A-13 **IN RE: JOHN/DEBRA TAWNEY**

MOTION TO CONFIRM PLAN
7-7-2020 [30]

JOHN TAWNEY/MV
SUSAN SILVEIRA/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9001-1 defines a "motion" as "all motions, applications, objections, or other requests made to the court for orders or other judicial activity." LBR 9014-1(a) states that parties shall serve and set for hearing all contested matters, including motions, and other matters for which a hearing is necessary in accordance with the local rules and, Title 11 of the United States Code, and the Federal Rules of Bankruptcy Procedure. LBR 9014-1(b) requires that a party self-set a motion for hearing on the dates and times specified on each department's motion calendar.

LBR 9014-1(c)(1) requires that all filed motions, which includes counter-motions and other requests made to the court for orders or other judicial activity under LBR 9001-1, shall include a Docket Control Number ("DCN") by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions. LBR 9014-1(c)(4) states that "counter motions shall be treated as separate motions with a new [DCN] assigned in the manner provided for above."

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about DCNs. These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. This motion does not have a DCN.

The Local and Federal Rules govern the procedure for proper submission of motions. Movant must properly file and serve the motion, notice of hearing, and any other relevant documents upon interested parties before this court will consider the motion.

4. 20-12228-A-13 **IN RE: KHALID CHAOUI**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-21-2020 [28]

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid.

5. 18-15035-A-13 **IN RE: HENRY LOYA HERNANDEZ AND ALICE HERNANDEZ**

RPZ-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-25-2020 [36]

WELLS FARGO BANK, N.A./MV
SCOTT LYONS/ATTY. FOR DBT.
ROBERT ZAHRADKA/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to September 3, 2020. Pursuant to 11 U.S.C. § 362(e)(2)(B), the court finds good cause exists to extend 60-day period to decide this motion due to a motion to modify plan set for hearing September 3, 2020 that, if approved, would cure defaults owed to movant.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

This motion was filed and served pursuant to Local Rules of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

Wells Fargo Bank, N.A., as Trustee for the Carrington Mortgage Loan Trust, Series 2007-FRE1, Asset-Backed Pass-Through Certificates ("Creditor") moves for relief from the automatic stay pursuant to 11 U.S.C. § 362(d) and Federal Rule of Bankruptcy Procedure 4001 with respect to the debtors' principal residence located at 915 S. Harris St., Hanford, California 93230 (the "Residence"). Doc. #36. Henry Loya Hernandez and Alice V. Hernandez (the "Debtors"), filed a timely opposition to Creditor's motion on the grounds that the Debtors intend to cure the post-petition default through modification of their Chapter 13 plan. Doc. #50. A hearing on the Debtors' motion to confirm a modified plan is scheduled for September 3, 2020, at 9:30 a.m. Doc. #45.

The Debtors filed this Chapter 13 case on December 19, 2018. See Doc. #1. An order confirming the Debtors' Chapter 13 plan was entered on February 21, 2019. The Debtors' ongoing mortgage payments are outside of the plan. See Doc. #13. Creditor asserts that the Debtors defaulted on at least three post-petition payments in the amounts of (1) $2,071.02 due on March 1, 2020, (2) $2,157.27 due on April 1, 2020, and (3) $2,157.27 due on May 1, 2020, less $116.55 in the

Debtors' suspense account, with monthly payments coming due on the 1st of every month. Doc. #40, Stanger Decl. at ¶ 8. Creditor states the last payment received from the Debtors was in the amount of $2,071.02 on May 6, 2020, which was applied to the payment that was due on February 1, 2020. Doc. #38; see also Doc. #41, Ex. 7. Creditor calculates pre-petition arrears totaling $8,443.42 and post-petition arrears of $6,269.01 as of the filing of this motion on June 25, 2020. Doc. #38. Creditor also argues that the total outstanding amount due under the note secured by a deed of trust to the Residence is $421,260.58, the Residence has a fair market value according to the Debtors' schedules of only $287,463.00, and thus the Debtors lack equity to the extent of -$133,797.58. Doc. #39. The obligation under the note matures on January 1, 2037. Doc. #41, Ex. 4.

Bankruptcy Code section 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization. When relief from the automatic stay is sought under 11 U.S.C. § 362(d)(2), section 362(g) assigns the burden of proof to the creditor on the issue of equity, and the debtor bears the burden of proving that the property is necessary to an effective reorganization. After review of the included evidence, it appears the Debtors lack any equity in the Residence, and the Debtors have not provided any contrary evidence. However, it is not clear to the court whether the Residence is necessary to the Debtors' effective reorganization.

Bankruptcy Code section 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985). Creditor argues it also is entitled to relief from the automatic stay under 11 U.S.C. § 362(d)(1) because Creditor lacks adequate protection where the Debtors have failed to maintain ongoing post-petition payments as they come due to Creditor, and there is no equity cushion to protect Creditor's security interest.

The Debtors oppose relief from the automatic stay as to their Residence on the basis that they have filed a modified Chapter 13 plan that seeks to cure the post-petition arrears owing to Creditor, and extend the length of the plan from 60 to 84 months. Doc. #50. The CARES Act, Pub.L. 116–136, added subsection (d)(1) to 11 U.S.C. § 1329 to allow Chapter 13 debtors to modify a confirmed plan, after notice and a hearing, due to COVID-19-related hardships.

Section 1329(d) provides:

> (1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—
>
> > (A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID–19) pandemic; and
> >
> > (B) the modification is approved after notice and a hearing.
>
> (2) A plan modified under paragraph (1) may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.
>
> (3) Sections 1322(a), 1322(b), 1323(c), and the requirements of section 1325(a) shall apply to any modification under paragraph (1).

The court does not reach the merits of the Debtors' motion to confirm a modified plan here. However, adequate protection could be offered by the monthly payments contemplated by a modified plan. The court is persuaded by Green Tree Acceptance, Inc. v. Hoggle (In re Hoggle), 12 F.3d 1008 (11th Cir. 1994), Mendoza v. Temple-Inland Mortgage Corp. (In re Mendoza), 111 F.3d 1264 (5th Cir. 1997), and subsequent cases holding that a Chapter 13 debtor may modify a plan after confirmation under 11 U.S.C. § 1329 to cure post-petition mortgage defaults, provided the modified plan satisfies 11 U.S.C. §§ 1322 and 1325.

Section 1329(a) permits modification only for claims "provided for by the plan." In Rake v. Wade, 508 U.S. 464, 474 (1993), the Supreme Court recognized, in various provisions of Chapter 13, "the phrase 'provided for by the plan' is [commonly understood] to mean that a plan 'makes a provision' for, 'deals with,' or even 'refers to' a claim." In In re Mrdutt, 600 B.R. 72, 77 (B.A.P. 9th Cir. 2019), the Ninth Circuit Bankruptcy Appellate Panel observed that a Chapter 13 debtor's direct payments to a creditor for a debt treated by the plan are payments under the plan for purposes of discharge under 11 U.S.C. § 1328(a). "Precisely, when the chapter 13 plan provides for the curing of prepetition mortgage arrears and a debtor's direct postpetition maintenance payments in accordance with § 1322(b)(5), such direct payments are 'payments under the plan.'" Id.

Section 1322(b)(5) expressly states that the plan may "provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due." As the Hoggle court noted, "Congress could have easily inserted the word prepetition to modify default but failed to do so. The omission is significant." Hoggle, 12 F.3d at 1010. The plain language of section 1322(b)(5) allows for the cure of *any* default, whether occurring prior to the filing of the petition or subsequent to confirmation of the plan. Id. "Read together sections 1322(b)(2) and (5) provide that a plan may provide 'for the curing of *any* default' as long as it does not modify the rights of a creditor's claim secured solely by the debtor's principal residence." Far W. Fed. Bank v. Vanasen (In re Vanasen), 81 B.R. 59, 62 (D. Or. 1987) (emphasis in original). Thus, a Chapter 13 debtor may modify the plan to cure post-confirmation defaults because section 1322(b)(5) is applicable to modification under section 1329.

Section 1329(b)(2) provides that a modified plan "becomes the plan" unless after notice and a hearing the court disapproves the modification. The Debtors filed a modified plan on July 24, 2020. Doc. #48. However, it is not yet clear to the court what payments, if any, the Debtors have made directly to Creditors or through the Chapter 13 trustee toward the maintenance of ongoing mortgage payments since a payment was received on May 6, 2020, and whether the Debtors have adequately provided for Creditor's claim in the modified plan and whether the Debtors are current as of the hearing date of this motion for relief from the automatic stay.

The court notes that Creditor states no loan modification programs are pending. Doc. #40; Stanger Decl. at ¶ 11. Creditor's counsel has informed the Debtors' counsel that despite the filing of this motion, Creditor may be willing to attempt an amicable resolution. Doc. #41, Ex. 8. And the Debtors have indicated their willingness to negotiate any potential loan assistance agreements. Doc. #51, Hernandez Decl. at ¶ 3.

This motion was filed on June 25, 2020. Doc. #36. Under Bankruptcy Code section 362(e)(2), the automatic stay terminates 60 days after the filing of a motion for relief from stay in the chapter 13 case of an individual unless there is a final decision on the motion or the 60-day period is extended by agreement or the court for good cause. Here, 60 days after the motion was filed is August 24, 2020. The Debtors have filed a motion to modify their plan that Debtors assert will cure the outstanding post-petition arrears on the Residence. Doc. #45. A hearing on that motion is set for September 3, 2020. Doc. #46. Because adequate protection could be offered by the monthly payments contemplated by the modified plan, the court finds good cause exists to extend the 60-day period under 11 U.S.C. § 362(e)(2)(B) so a continued hearing on this relief from stay motion can be held on September 3, 2020, in conjunction with the Debtors' motion to modify their plan.

6. 20-11646-A-13 **IN RE: LEAH KLASCIUS**
ETW-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-8-2020 [25]

JOSEF BEGELFER/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
EDWARD WEBER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order

This motion was filed and served pursuant to Local Rules of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

Josef Begelfer, Trustee of the Josef Begelfer 2012 Trust, an Individual ("Creditor") moves for relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (2) with respect to the debtor's principal residence at 2601 South Fulgham Street, Visalia, California 93277 (the "Residence"). Doc. #25. Creditor's motion is opposed by Leah Leona Theresa Klascius (the "Debtor"), and the Chapter 13 trustee ("Trustee") has filed a response. Doc. ##31, 36.

The Debtor filed this Chapter 13 case on May 11, 2020. See Doc. #1. Pursuant to a promissory note dated August 26, 2019, the Debtor agreed to repay to Creditor an interest-only loan, with monthly payments of $674.25 due on the first of each month, subject to late fees, starting November 1, 2019, with the loan maturing on October 1, 2024, at which time repayment of the principal amount of $90,000 plus interest is due. Doc. #28, Ex. A. The promissory note is secured by a deed of trust that encumbers the Residence. Doc. #28, Ex. B. The loan is serviced by Superior Loan Servicing. Id.

Bankruptcy Code section 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization. When relief from the automatic stay is sought under 11 U.S.C. § 362(d)(2), section 362(g) assigns the burden of proof to the creditor on the issue of equity, and the debtor bears the

burden of proving that the property is necessary to an effective reorganization. Although Creditor moves under section 362(d)(2), Creditor makes no argument why he is entitled to relief under section 362(d)(2). See Doc. #25. The Debtor scheduled the value of the Residence as $251,237.00, while Creditor contends the total amount owing on the loan is $109,837.23, which leaves the Debtor with significant equity in the Residence. Compare Doc. #1, Sched. D, Line 2.2 with Doc. #27, Begelfer Decl. at ¶ 3. There does not appear to be any other encumbrances on the Residence. See Doc. #1, Sched. D.

Bankruptcy Code section 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985). Creditor argues that he is entitled to relief from the automatic stay under 11 U.S.C. § 362(d)(1) because the Debtor is in default for one payment – apparently post-petition, and Creditor claims the Debtor will be in default for two payments by the time of the hearing on this motion. Doc. #25. Creditor asserts that the Debtor had not made any payments towards the loan. Doc. #27, Begelfer Decl. at ¶ 3. However, Trustee states that an ongoing mortgage payment of $1,199.25 was sent to Creditor on June 30, 2020, the check cleared Trustee's bank on July 8, 2020, so the loan is current through June 2020. Doc. #31. The Debtor intends to file an amended plan that provides for Creditor's claim. Doc. #37, Klascius Decl. at ¶¶ 1-2. As discussed above, Creditor has offered no evidence of equity in the Residence or alleged that his interest in the Residence is not adequately protected, when it appears there is a sizeable equity cushion that protects Creditor's interest.

Accordingly, this motion is DENIED.

7. 20-11646-A-13 **IN RE: LEAH KLASCIUS**
MHM-1

MOTION TO DISMISS CASE
7-8-2020 [21]

MICHAEL MEYER/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This motion was filed and served pursuant to Local Rules of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

The Chapter 13 trustee ("Trustee") has requested dismissal pursuant to 11 U.S.C. §§ 1307(c), 1307(e) and 1308(a). Trustee alleges that Debtor has failed to file tax returns for the years 2016, 2017, 2018, and 2019.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause.

Bankruptcy Code section 1308(a) states

> Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax

authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

Bankruptcy Code section 1307(e) states

> Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

Trustee contends that the Debtor failed to file tax returns for the years 2016, 2017, 2018, and 2019. Doc. #23, ¶ 4. The docket reveals that the meeting of creditors was set on June 9, 2020. See Doc. #15. Trustee's counsel examined the Debtor at the first meeting of creditors, where Debtor testified that she had not filed tax returns for the years 2016, 2017, 2018, and 2019. Doc. #23, ¶ 4. The proof of claim filed by the California Franchise Tax Board ("FTB") on June 11, 2020 shows the Debtor has not filed tax returns for years 2015 through 2019. Id.; see also Claim 4-1.

Section 1308(b) of the Bankruptcy Code authorizes the Chapter 13 trustee to hold open the meeting of creditors for a reasonable period of time to allow the debtor to file unfiled returns. The meeting of creditors was continued to July 7, 2020, at which the Debtor appeared and the meeting was concluded.

The Debtor timely filed an opposition to Trustee's motion on July 20, 2020, stating that the Debtor has provided her 2016, 2017, 2018, and 2019 to the Trustee. Doc. #33. However, the Trustee replied that the Debtor has not provided any evidence that all requisite tax returns for 2016 through 2019 have been filed with the appropriate governmental agencies. Doc. #39.

There is a factual question as to whether the Debtor's tax returns have been filed. This matter will proceed as scheduled to allow the Debtor to reply to Trustee's motion and provide evidence, if any, that all requisite tax returns for the years 2016, 2017, 2018, and 2019 have been filed with the appropriate governmental agencies.

8. 20-11454-A-13 **IN RE: RAYMOND SCOTT**
MHM-1

MOTION TO DISMISS CASE
7-13-2020 [17]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The court will issue the order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the Chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because debtor has failed to make all payments due under the plan (11 U.S.C. § 1307(c)(4)). Debtor is delinquent in the amount of $3,392.00. Doc. #19. Before this hearing, another payment in the amount of $1,696.00 will also come due. Id. The debtor failed to appear at the scheduled 341 meeting of creditors. Debtor did not oppose the motion.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

Accordingly, this motion will be GRANTED. The case will be dismissed.

9. 19-14555-A-13 **IN RE: JOSHUA/MANDY NEUFELDT**
FW-2

MOTION TO MODIFY PLAN
6-25-2020 [30]

JOSHUA NEUFELDT/MV
GABRIEL WADDELL/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not

materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

10. 19-14555-A-13 **IN RE: JOSHUA/MANDY NEUFELDT**
FW-3

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
7-14-2020 [40]

GABRIEL WADDELL/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

In this Chapter 13 case, Fear Waddell, P.C., attorneys for debtors Joshua Allen Neufeldt and Mandy Anne Neufeldt, have applied for an allowance of interim compensation and reimbursement of expenses. Doc. #40. The applicant requests that the court allow compensation in the amount of $3,081.50 and reimbursement of expenses in the amount of $453.20, totaling $3,534.70, for services rendered from June 7, 2018 through June 30, 2020. Id.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See id. § 330(a)(3). The services rendered for the relevant time period of this application include, without limitation, pre-petition counseling and fact gathering; preparing and filing of the voluntary petition, schedules

and forms; obtaining an order valuing collateral; preparing, filing, and getting the Chapter 13 plan confirmed. Doc. #40. The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of $3,081.50 and reimbursement of expenses in the amount of $453.20 to be paid in a manner consistent with the terms of the confirmed plan.

11. 19-12557-A-12 **IN RE: FRANK/SUSAN FAGUNDES**
WJH-16

MOTION FOR COMPENSATION FOR GENSKE, MULDER & COMPANY, LLP, ACCOUNTANT(S)
7-7-2020 [173]

GENSKE, MULDER & COMPANY/MV
RILEY WALTER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

In this Chapter 12 case, Genske, Mulder & Company, LLP, accountants for debtors Frank G. Fagundes and Susan A. Fagundes, fdba Frank and Susan Fagundes Dairy, dba FF Bull, have applied for an allowance of compensation. Doc. #173. The applicant requests that the court allow final compensation in the amount of $4,615.00 for services rendered from June 14, 2019 through May 8, 2020. Id. The applicant requests no reimbursement of expenses. Id.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by professionals employed under 11 U.S.C. § 327 in this case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See id. § 330(a)(3). The services rendered for the relevant time period of this application include, without limitation, researching the claim of the Internal Revenue Service ("IRS") and tax issues under 11 U.S.C. § 1232, reviewing the debtors' ledger, and preparing and filing the debtors' 2019 federal and state tax returns. Doc. ##173, 175-76. The court

finds that the compensation sought is reasonable, and the court will approve the application on a final basis.

This motion is GRANTED. The court allows final compensation in the amount of $4,615.00.

12. 20-10865-A-13 **IN RE: ARTURO MONTEJANO MELGOZA AND LIDUVINA SEVILLA DE MONTEJANO**
EPE-4

MOTION TO CONFIRM PLAN
6-24-2020 [58]

ARTURO MONTEJANO MELGOZA/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

13. 20-12069-A-13 **IN RE: SCOTT/SARINA DUTEY**
TCS-3

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC.
7-23-2020 [35]

SCOTT DUTEY/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Scott Dutey and Sabrina Dutey (the "Debtors"), the debtors in this Chapter 13 case, move the court for an order valuing the Debtors' vehicle, a 2016 Nissan Altima SL (the "Vehicle"), which is the collateral of Americredit Financial Services, Inc. d/b/a GM Financial ("Creditor"). Doc. #35.

Bankruptcy Code section 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." 11 U.S.C. § 506(a)(1). Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

The Debtors contend the replacement value of the Vehicle is at most $14,375.00 based on the age and condition of the Vehicle and reference to the NADA guide. Doc. #37, Dutey Decl. ¶¶ 4-7. The debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Accordingly, unless opposition is presented at the hearing, the court is inclined to grant the Debtors' motion and fix Creditor's secured claim at the replacement value of $14,375.00. A proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the Chapter 13 plan.

14. 20-12179-A-13 **IN RE: BURRON/ANNA CUMMINGS**
FW-1

MOTION TO VALUE COLLATERAL OF CHRYSLER CAPITAL
7-14-2020 [12]

BURRON CUMMINGS/MV
GABRIEL WADDELL/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Burron Marcel Cummings and Anna Mae Cummings (the "Debtors"), the debtors in this Chapter 13 case, move the court for an order valuing the Debtors' vehicle, a 2017 Dodge Journey SE (the "Vehicle"), which is the collateral of Chrysler Capital ("Creditor"). Doc. #12.

Bankruptcy Code section 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." 11 U.S.C. § 506(a)(1). Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

The Debtors' opinion of the replacement value of the Vehicle is $11,327.00. Doc. #14, Cummings Decl. ¶ 2. The debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Accordingly, the motion is GRANTED and Creditor's secured claim shall be fixed at the replacement value of $11,327.00. A proposed order shall specifically

identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the Chapter 13 plan.

15. 20-12179-A-13 **IN RE: BURRON/ANNA CUMMINGS**
FW-2

MOTION TO VALUE COLLATERAL OF LENDMARK FINANCIAL SERVICES
7-14-2020 [16]

BURRON CUMMINGS/MV
GABRIEL WADDELL/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Burron Marcel Cummings and Anna Mae Cummings (the "Debtors"), the debtors in this Chapter 13 case, move the court for an order valuing the Debtors' vehicle, a 1999 Toyota Avalon Sedan XLS (the "Vehicle"), which is the collateral of Lendmark Financial Services ("Creditor"). Doc. #16.

Bankruptcy Code section 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." 11 U.S.C. § 506(a)(1). Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

The Debtors' opinion of the replacement value of the Vehicle is $1,000.00. Doc. #18, Cummings Decl. ¶ 2. The debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Accordingly, the motion is GRANTED and Creditor's secured claim shall be fixed at the replacement value of $1,000.00. A proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the Chapter 13 plan.

16. 18-14586-A-13 **IN RE: JAMES/LAURA JORGENSEN**
NEA-3

RESCHEDULED HEARING RE: MOTION TO MODIFY PLAN
6-11-2020 [213]

JAMES JORGENSEN/MV
NICHOLAS ANIOTZBEHERE/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The Chapter 13 trustee's objection is overruled; Aluisi's objection is sustained.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rules of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

James Richard Jorgensen and Laura Mae Jorgensen (the "Debtors") move to confirm a second modified Chapter 13 plan filed on June 11, 2020 (the "Second Modified Plan"). Doc. #213. The Debtors seek to modify their previously confirmed plan to include the amended claim of Donald Aluisi and Karen Aluisi (the "Aluisis"), which was amended from an unliquidated claim to a claim for $2,539,575.00. Id.; see also Claim No. 3-2. The court overruled the Debtors' objection to the Aluisis' claim on May 13, 2020. Doc. #212.

Pursuant to the court's ruling on the Debtors' motion to dismiss in Aluisi et al. v. Jorgensen, Adversary Proceeding No. 19-01026 (Bankr. E.D. Cal. filed Feb. 16, 2019), the court dismissed the Aluisis' fraud claim for each year prior to 2011, effectively limiting the non-dischargeable portion of the Aluisis' to an amount still to be determined in the adversary proceeding, but expected to be less than $30,000.00. See id., Doc. #82, Memorandum; and Doc. #96; Joint Status Rpt.

The Second Modified Plan proposes monthly payments of $708.71 for 60 months, offering a 1% dividend to general unsecured creditors. Doc. #217, at § 3.14. The Second Modified Plan includes a nonstandard provision that provides, "All payments made to a creditor shall first be applied to the non-dischargeable portion of that creditor's claim, if any, and if the non-dischargeable portion of that creditor's claim is paid in full during the life of the plan, the remaining payments shall be applied to the dischargeable portion of the creditor's claim." Id. at § 7.02.

Michael H. Meyer, the Chapter 13 trustee (the "Trustee") in this case, filed an objection to confirmation on the grounds that the Second Modified Plan does not meet the "best interests of the creditors" test under 11 U.S.C. § 1325(a)(4) and fails the feasibility requirement of 11 U.S.C. § 1325(a)(6). Doc. #226.

The Trustee's first grounds for objection is the Second Modified Plan fails to provide for the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim that is at least the amount that would be paid on such claim if the Debtors' estate was liquidated under Chapter 7 on such date. Doc. #226. The Trustee notes the confirmed plan provided for a 100% dividend to general unsecured creditors equal to $20,962.00, whereas the Second Modified Plan proposes to pay only a 1% dividend, equal to $25,605.95, on general unsecured claims of $2,560,697.65. Id. The Debtors contend the monthly payments between the plans remain the same, but the Second Modified Plan extends payments from 36 months to 60 months. Doc. #234. The difference in what each general unsecured creditor receives is due to inclusion of the Aluisis' $2,539,575.00 amended claim. Id.

In calculating whether general unsecured creditors will receive at least as much under the Second Modified Plan as they would in a hypothetical Chapter 7 liquidation, the Trustee relies on the value of proceeds from the sale of Mr. Jorgensen's accounting business goodwill, which was scheduled as worth $78,163.44 as of the petition date of November 13, 2018 and was not claimed as exempt. Id.; see also Doc. #28, Amended Sched. A/B, Line 30. Together with other property, the Trustee calculated nonexempt assets totaling $95,882.18 that could have been available to unsecured creditors in a hypothetical liquidation under Chapter 7. Doc. #226. The Debtors concede that there *were* nonexempt assets totaling $95,882.18 at the time of the filing of this Chapter 13 case, but contend that the liquidation value is determined as of the "effective date of the plan," which pursuant to the Chapter 13 plan form used in the Eastern District of California is "effective upon its confirmation." See Doc. #217, at § 1.05. The Debtors explain that proceeds from the sale of Mr. Jorgensen's accounting business goodwill was paid at a rate of $3,895.02 per month, leaving a remaining balance of only $0.17 as of the date of the hearing on this motion. Doc. #234. As a result, the Debtors say they will have nonexempt assets totaling only $17,718.91 at the time of the confirmation hearing. Doc. #234.

The court finds support for the Debtors' position in Messer v. Maney (In re Messer), 2014 Bankr. LEXIS 675 (B.A.P. 9th Cir. Feb. 19, 2014). In Messer, the Ninth Circuit Bankruptcy Appellate Panel ("BAP") held the value of an annuity for the purposes of 11 U.S.C. § 1325(a)(4) analysis was the present day value of the entire annuity as of the confirmation hearing date. Id. at *13-20. The BAP recognized that although the Bankruptcy Code uses the phrase "effective date of the plan," the Bankruptcy Code does not define that phrase. Id. at *14. Noting several cases, the BAP interpreted the "effective date of the plan" to mean the date the plan becomes binding on the parties, which is generally upon confirmation or a specific date provided for in the plan. Id. (citations omitted.) Here, as the Debtors noted, the Chapter 13 plan form used in the Eastern District of California specifically provides that the plan is "effective upon its confirmation."

The BAP in Messer then considered how to value an asset for the purposes of 11 U.S.C. § 1325(a)(4). Section 1325(a)(4) requires "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." The BAP found the inclusion of the temporal designation, "on such date," that is the "effective date of the plan," significant and held that it requires the bankruptcy court to fix the present value of the debtor's assets as of the confirmation date. 2014 Bankr. LEXIS 675, at *17-20. This measurement calculates the sum that would be available to each unsecured creditor if a hypothetical Chapter 7 liquidation of the debtor's

nonexempt assets were completed on the "effective date of the plan," which is the confirmation date. Id. at *19-20. In Messer, the BAP held the value of the annuity in question for the purposes of 11 U.S.C. § 1325(a)(4) was the present day value of the entire annuity as of the confirmation hearing date. Id. at *17. In this case, as the Debtors stated, the present value of the proceeds from the sale of Mr. Jorgensen's accounting business goodwill appears to be only $0.17.

The Trustee's second ground for objection is the Debtors will not be able to make all payments under the Second Modified Plan and comply with the plan. Doc. #226. The Trustee's only argument in support of this basis for objection is that the Debtors' Amended Schedules I and J were last filed on January 9, 2019. Id.; see also Doc. #28. These schedules show monthly income from operating Mr. Jorgensen's accounting business of $2,462.18, and from Social Security of $2,207.00 for Mr. Jorgensen and $1,088.00 for Mrs. Jorgensen. Id., Sched. I, Lines 8a, 8e, 9-10, 12. Amended Schedule I does not appear to include the $3,895.02 per month from proceeds from the sale of Mr. Jorgensen's accounting business goodwill, so the ending of the goodwill purchase payments do not appear to have an effect on the Debtors' monthly income. The Debtors list monthly expenses of $4,969.37, leaving monthly net income of $1,030.19. Id., Sched. J, Lines 23b, 23c. The Debtors' prior plan was confirmed on January 25, 2020. Doc. #182. As discussed above, the monthly payments of $708.81 proposed by the Second Modified Plan are the same as provided for in the confirmed plan, but the Second Modified Plan extends payments from 36 months to 60 months. Doc. #234. The motion to confirm the Second Modified Plan states the Debtors are current on all payments to the Trustee. Doc. #213. It appears the Debtors can afford the payments contemplated under the Second Modified Plan.

Accordingly, the Trustee's objection is overruled.

The Aluisis filed a limited objection on the basis that the court should confirm the Second Modified Plan but disallow the nonstandard provision at section 7.02, which seeks to allocate plan payments first to the non-dischargeable portion of a creditor's claim, then to the dischargeable portion only if the non-dischargeable portion of the claim is paid in full. Doc. #230. The Aluisis argue that a debtor may only direct the allocation of payments by creditors where the payments are "voluntary;" but a payment in the context of a judicial proceeding such as bankruptcy is "involuntary" and therefore a debtor cannot control its allocation. Id.

The Aluisis argue that because a Chapter 13 plan, like a Chapter 11 plan, requires bankruptcy court approval, payments made pursuant to a reorganization plan are under the court's jurisdiction and are subject to the requirements of the Bankruptcy Code, so such payments necessarily involve judicial action and are inherently involuntary. Doc. #230. The Aluisis cite several cases in support of their argument. Id. In United States v. Technical Knockout Graphics (In re Technical Knockout Graphics), 833 F.2d 797, 802 (9th Cir. 1987), the Ninth Circuit Court of Appeals held that a Chapter 11 debtor-in-possession's post-petition payments to the IRS made prior to confirmation of a reorganization plan were involuntary, such that the IRS was entitled to apply the payments as it "saw fit," and the bankruptcy court did not have equitable jurisdiction to order allocation of the payments between trust fund and nontrust fund tax liabilities. In United States v. Condel, Inc. (In re Condel, Inc.), 91 B.R. 79, 82 (B.A.P. 9th Cir. 1988), in considering application of tax payments pursuant to a Chapter 11 plan, the Ninth Circuit BAP found Technical Knockout Graphics to be controlling and held such payments should be treated as involuntary even though a plan had been confirmed, with the result that the IRS could apply the debtor's plan payments in its discretion. In United States v.

Stanmock, Inc. (In re Stanmock, Inc.), 103 B.R. 228, 234 (B.A.P. 9th Cir. 1989), the Ninth Circuit BAP considered whether a bankruptcy court can confirm a Chapter 11 plan that allowed a debtor to designate payments to the IRS must be applied to satisfy the trust fund portion of delinquent federal taxes prior to the nontrust fund portion, and concluded that the court could not. The BAP in Stanmock reasoned the tax payment in that case could only be made as the court directs, with notice to the affected party who is entitled to be heard, so the debtor's payment could not be characterized as voluntary. Stanmock, 103 B.R. at 231-34. The BAP held a bankruptcy court cannot confirm a Chapter 11 plan that allowed a debtor to designate how the IRS must allocate the payments it receives. Id. at 233-34.

The Debtors contend that several of the cases cited by the Aluisis preceded the Supreme Court's ruling in United States v. Energy Resources Co., Inc., 495 U.S. 545 (1990). In Energy Resources, the Supreme Court considered whether a bankruptcy court had the authority to order the IRS to apply payments made pursuant to a Chapter 11 reorganization plan to trust fund debts prior to any payment of the nontrust fund portion of the tax debts owed. Energy Resources, 495 U.S. at 549. The Court acknowledged the conflict at the time among the circuits over this issue. Id. at 548. The First Circuit below held the bankruptcy court did have the power to direct the allocation of payments regardless of whether the payments were characterized as "voluntary" or "involuntary," and noted its split with the Ninth Circuit in Technical Knockout Graphics. IRS v. Energy Resources Co. (In re Energy Resources Co.), 871 F.2d 223, 226 (1st Cir. 1989). The Supreme Court affirmed, holding "whether or not the payments at issue are rightfully considered to be involuntary, the bankruptcy court has the authority to order the IRS to apply the payments to trust fund liabilities if the bankruptcy court determines that this designation is necessary to the success of a reorganization plan." Energy Resources, 495 U.S. at 548-49. The Supreme Court recognized that while the Bankruptcy Code did not explicitly authorize bankruptcy courts to approve reorganization plans designating tax payments between trust fund and nontrust fund debt, the Bankruptcy Code does grant bankruptcy courts residual authority to approve reorganization plans including any appropriate provision not inconsistent with the applicable provisions of the Code under 11 U.S.C. § 1123(b)(5); and bankruptcy courts may "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Code under 11 U.S.C. § 105. Energy Resources, 495 U.S. at 549.

The Debtors also cite In re Fielding, 2015 WL 1676877 (Bankr. N.D. Tex. Apr. 10, 2015), for the proposition that payments made in a Chapter 13 case were voluntary where the bankruptcy filing was voluntary, and therefore a debtor could dictate how the payments would be allocated. However, the Fielding court did not conclude that payments made pursuant to Chapter 13 plans were voluntary; rather, the court found that the debtors' payment to the IRS of proceeds from the sale of *exempt* property that would not be considered in the plan was voluntary so the debtors, not the creditor, could direct the allocation of such payment. Id. at *9.

It is unclear in light of Energy Resources and Technical Knockout Graphics whether this court has the equitable power to allow the Debtors to specify the allocation of Chapter 13 plan payments to satisfy the non-dischargeable portion of a creditor's claim first, then to the dischargeable portion only if the non-dischargeable portion of the claim is paid in full. The Aluisis did not discuss Energy Resources and what effect, if any, the Supreme Court's ruling has on the cited authority from the Ninth Circuit.

Energy Resources seems to dispense with the issue of whether a payment is voluntary or involuntary, at least in dealing with the IRS, and leaves

allocation of tax payments to the bankruptcy court's exercise of its equitable powers. As the Ninth Circuit BAP in Stanmock observed in the context of Chapter 11 case,

> In our view, the matter is not simply one of voluntariness or of the debtor's options weighed against his restrictions in bankruptcy, but of the debtor's fiduciary obligations and of the court's authority. "The debtor in possession is not free to deal with estate property as he chooses, but holds it in trust for the benefit of creditors, standing in the shoes of a trustee in every way." While it will always personally benefit the debtor in possession's principals for tax payments to be applied first to trust fund taxes, it does not necessarily follow that the best interest of the corporate debtor would be served. A conflict of interest is inherent in this regard between the debtor and its principals. As noted by the court in Technical Knockout Graphics, a debtor in possession, which is using the authority of the bankruptcy court to keep its creditors at bay while it reorganizes and regains financial stability, "is not free to abuse this system by designating its payments in a way that benefits only its responsible persons, and possibly harms other creditors, including the IRS . . . ."

Stanmock, 103 B.R. at 33 (citations and internal quotation marks omitted). The Ninth Circuit BAP in Gerwer v. Salzman (In re Gerwer), 253 B.R. 66, 70-71 (B.A.P. 9th Cir. 2000), which was decided after Energy Resources, continued to hold that a debtor in Chapter 7 could not direct a distribution by the estate to satisfy the non-dischargeable portion of a debt because post-petition payments are not voluntary and the creditor could allocate the distribution as he saw fit. The Gerwer Panel recognized "the apportionment remedy appears to be an equitable remedy, and the Ninth Circuit has held bankruptcy courts lack the equitable jurisdiction to direct application of involuntary payments by a debtor." Gerwer, 253 B.R. at 72 (citing Technical Knockout Graphics, 833 F.2d at 803).

The court is inclined to not exercise its equitable powers under 11 U.S.C. § 105 even if available in this case. The Debtors state in their declaration in support of the motion to confirm the Second Modified Plan, that they modified the confirmed plan to account for the Aluisis' amended claim, and "[a]side from accounting for the allowed claim of the Aluisis, and specifying how the dischargeable and non-dischargeable portion of that claim is paid, [the Debtors'] plan is otherwise exactly the same as the previously confirmed plan." Doc. #216, Jorgensen Decl. at ¶¶ 2-3. While the nonstandard provision appears to be facially neutral in its language and application to all general unsecured creditors, it is clearly meant to unfairly discriminate against the Aluisis' amended claim. Although the non-dischargeable portion of the Aluisis' claim is yet to be determined, allowing the Debtors to direct plan payments to satisfy any non-dischargeable debt first rather than allowing the Aluisis to allocate payments received pursuant to the plan as the Aluisis "saw fit" would likely result in even more of the Aluisis' $2,539,575.00 amended claim being discharged and deny the Aluisis their right to pursue post-bankruptcy collection efforts, since the Second Modified Plan proposes to pay only $25,605.95 to general unsecured creditors and the non-dischargeable portion of the Aluisis' claim is likely limited to approximately $21,846.00. AP Doc. #96, Joint Status Rpt.

Accordingly, the court is inclined to sustain the Aluisis' limited objection and disallow the nonstandard provision at section 7.02, and otherwise grant the Debtors' motion to confirm the Second Modified Plan.

17. 20-10886-A-13 **IN RE: KIRK/JAYCEE KILLIAN**
MAZ-1

CONTINUED MOTION TO CONFIRM PLAN
6-16-2020 [42]

KIRK KILLIAN/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1), and continued from July 23, 2020 to be heard in conjunction with the debtors' motions to value the collateral pursuant to LBR 3015-1(i). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

18. 20-10886-A-13 **IN RE: KIRK/JAYCEE KILLIAN**
MAZ-2

MOTION TO VALUE COLLATERAL OF CHRYSLER CAPITAL
7-7-2020 [51]

KIRK KILLIAN/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the

U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Kirk P. Killian and Jaycee M. Killian (the "Debtors"), the debtors in this Chapter 13 case, move the court for an order valuing the Debtors' vehicle, a 2016 Dodge Ram 3500 (the "Vehicle"), which is the collateral of Chrysler Capital ("Creditor"). Doc. #51.

Bankruptcy Code section 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." 11 U.S.C. § 506(a)(1). Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

The Debtors' opinion of the replacement value of the Vehicle is $31,111.00 based on the age and condition of the Vehicle and reference to the Kelly Blue Book valuation. Doc. #53, Killian Decl. ¶¶ 4-6. The debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Accordingly, the motion is GRANTED and Creditor's secured claim shall be fixed at the replacement value of $31,111.00. A proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the Chapter 13 plan.

19. 20-10886-A-13 **IN RE: KIRK/JAYCEE KILLIAN**
MAZ-3

MOTION TO VALUE COLLATERAL OF EXETER FINANCE
7-7-2020 [56]

KIRK KILLIAN/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Kirk P. Killian and Jaycee M. Killian (the "Debtors"), the debtors in this Chapter 13 case, move the court for an order valuing the Debtors' vehicle, a 2012 BMW 5 Series Sedan 4D 528xi (the "Vehicle"), which is the collateral of Exeter Finance LLC ("Creditor"). Doc. #56.

Bankruptcy Code section 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." 11 U.S.C. § 506(a)(1). Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

The Debtors' opinion of the replacement value of the Vehicle is $6,968.00 based on the age and condition of the Vehicle and reference to the Kelly Blue Book valuation. Doc. #58, Killian Decl. ¶¶ 4-7. The debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Accordingly, the motion is GRANTED and Creditor's secured claim shall be fixed at the replacement value of $6,968.00. A proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the Chapter 13 plan.

20. 20-10691-A-13 **IN RE: JENNIFER SCHULTZ**
FW-1

MOTION TO MODIFY PLAN
6-30-2020 [27]

JENNIFER SCHULTZ/MV
GABRIEL WADDELL/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is CONDITIONALLY GRANTED. If the Chapter 13 trustee informs the court that the debtor is current at this hearing, the motion to modify the Chapter 13 plan will be granted. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

21. 20-10691-A-13 **IN RE: JENNIFER SCHULTZ**
MHM-1

CONTINUED MOTION TO DISMISS CASE
6-4-2020 [21]

MICHAEL MEYER/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on August 11, 2020. Doc. #44.

22. 19-11395-A-13 **IN RE: ORA DOUANGPHOUXAY**
FW-2

RESCHEDULED HEARING RE: MOTION TO MODIFY PLAN
6-11-2020 [62]

ORA DOUANGPHOUXAY/MV
GABRIEL WADDELL/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

23. 19-12395-A-13 **IN RE: TAMMIE SPARKS**
SL-1

MOTION TO INCUR DEBT
7-16-2020 [34]

TAMMIE SPARKS/MV
SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if debtor adequately addresses the court's concerns explained below.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Although not required, Noble Federal Credit Union ("Noble") filed a limited opposition on August 7, 2020.

Doc. #40. Unless further opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion if debtor properly addresses it's concerns explained below. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Tammie Lanett Sparks (the "Debtor"), the debtor in this Chapter 13 case, seeks the court's authorization to obtain financing together with her son-in-law James Randall Say II ("Say"), who is not a debtor in this case, for the purchase of a residence. Doc. #34.

The Debtor has rented her residence at 9899 North Backer Avenue, Fresno, California 93720 for the past five years. Doc. #37, Sparks Decl. ¶¶ 2-3. The Debtor and Say want to buy a new home at 3411 Marengo Avenue, Clovis, California 93619 (the "Property") for the sale price of $395,000.00. Id. at ¶ 4; see also Doc. #36, Ex. B. The Debtor will not incur any out-of-pocket expenses for the deposit and closing cost. Doc. #37, Sparks Decl. ¶ 9. Say received a gift of $80,000.00 from his mother and will use these funds to pay the deposit and costs necessary to close on the purchase of the Property. Id. The Debtor and Say, together as co-borrowers, want to borrow $337,565.00 from American Financial Network, Inc. ("AFN") toward the purchase of the Property. Id. at ¶¶ 3, 10. The monthly loan payments will be approximately $2,191.00, inclusive of principal, interest, and escrow. Id. at ¶ 10; see also Doc. #36, Ex. B. Say states that he will pay half of that monthly payment, an estimated $1,095.50 per month. Doc. #37, Sparks Decl. ¶ 11; Doc. #38, Say Decl. ¶ 4. This leaves the Debtor responsible for the remaining half of the monthly payment in the amount of $1,095.50.

On August 7, 2020, creditor Noble Federal Credit Union ("Noble") filed a limited opposition to the Debtor's motion. Doc. #40. Noble does not oppose the Debtor incurring debt to purchase the Property, as long as the new debt does not interfere with the Debtor's ability to continue making payments on her confirmed plan that provides a 100% dividend to unsecured creditors. Id. Noble's limited opposition raises many of the same concerns about the Debtor's ability to make the monthly payments for the Property as the court has after reviewing the evidence. The Debtor should be prepared to address these issues at the hearing.

Specifically, Schedule J shows the Debtor's expenses for rent at her current residence is $1,695.00, leaving monthly net income of $845.00. See Doc. #1. The Debtor's confirmed Chapter 13 plan provides for monthly plan payments of $845.00. See Doc. ##3, 28. If the Debtor will in fact be responsible for only half of the mortgage payment in the estimated amount of $1,095.50, this appears to be a reduction in the Debtor's monthly expenses.

However, Say's declaration states that he lives with the Debtor and "currently contribute[s] half of the monthly rent payment, utilities, groceries, homeowners insurance in order to pay for our combined living expenses." Doc. #38, Say Decl. at ¶¶ 2-3. It is not clear exactly how much and for how long Say has contributed to half of the Debtor's rent, utilities, groceries, and insurance, and whether this contribution is reflected in the Debtor's Schedule I filed on the petition date of June 5, 2019 or the Chapter 13 plan confirmed on September 16, 2019. See Doc. ##1, 28.

The motion states that the Debtor is retired and receives retirement and spousal support income. Doc. #34, at ¶ 12. The Debtor's original Schedule I does list family support payments of $2,310.00 and retirement income of $3,114.31. See Doc. #1, Sched. I, Lines 8c and 8g. The Debtor's "amended"

Schedule I, which is submitted as an exhibit in support of this motion but has not been filed separately, include those two same sources of income in the same amounts, but adds as "other monthly income" a $1,670.00 monthly contribution from Say for the estimated mortgage payments. Doc. #36, Ex. A.

The Debtor should clarify whether the amended schedule is double counting Say's contribution. It appears Say has the ability to make his share of the mortgage payments. Say is employed by Joseph T Ryerson and Son Inc., where he makes gross monthly income of $4,119.34, netting approximately $2,428.86 per month. Doc. #38, Say Decl. ¶ 3. However, the $1,670.00 monthly contribution from Say listed in the "amended" Schedule I is $574.50 more than the $1,095.50 that Say has committed to paying,and should be addressed at hearing. See id. ¶ 4. Adjusting for this $574.50 difference appears to reduce the Debtor's monthly net income to $771.77, which is insufficient to maintain monthly plan payments of $845.00.

If the Debtor can address the issues raised above to the court's satisfaction and unless further opposition is presented at the hearing, the court is inclined to grant the motion and authorize the Debtor to obtain financing for the purchase of the Property.

24. 20-10497-A-13 **IN RE: JOHN/LISA BEVINGTON**
JDR-1

MOTION TO CONFIRM PLAN
6-19-2020 [26]

JOHN BEVINGTON/MV
JEFFREY ROWE/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

25. 20-10497-A-13 **IN RE: JOHN/LISA BEVINGTON**
JDR-2

MOTION TO VALUE COLLATERAL OF NATIONWIDE BANK
6-19-2020 [36]

JOHN BEVINGTON/MV
JEFFREY ROWE/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

John Douglas Bevington and Lisa Gaye Bevington (the "Debtors"), the debtors in this Chapter 13 case, move the court for an order valuing the Debtors' vehicle, a 2013 Nissan Maxima SV Sedan (the "Vehicle"), which is the collateral of Nationwide Bank dba Nationwide Trust Company, FSB ("Creditor"), whose loan is serviced by First Investors Financial Servicing Corporation. Doc. #36.

Bankruptcy Code section 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." 11 U.S.C. § 506(a)(1). Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

The Debtors' opinion of the replacement value of the Vehicle is $9,449.00 based on the make, model, age, and condition of the Vehicle and reference to the Kelly Blue Book valuation. Doc. #38, Bevington Decl. ¶¶ 4-9. The debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Accordingly, the motion is GRANTED and Creditor’s secured claim shall be fixed at the replacement value of $9,449.00. A proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the Chapter 13 plan.

3:30 PM

1. 20-10591-A-13 **IN RE: MARIA LUNA MANZO**
   20-1033

   RESCHEDULED STATUS CONFERENCE RE: COMPLAINT
   6-3-2020 [1]

   AHMED V. LUNA MANZO ET AL
   DAVID GILMORE/ATTY. FOR PL.

NO RULING.